

REMARKS

Claims 9 to 18 are now pending and being considered.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 9 to 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Oswald et al., U.S. Patent No. 6,907,335 in view of Burdock et al., U.S. Patent No. 6,526,342.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 9 specifically provides that *a sensor arrangement determines the velocity of the vehicle and that the remote sensor is used to perform a plausibility check for the velocity of the vehicle*. In the context of the exemplary embodiment, a velocity is determined by a sensor arrangement 14, as provided for in claim 9 as presented. This determined velocity is then subjected to *a plausibility check by another sensor* – namely, the remote sensor.

In contrast, the “Oswald” reference refers to a pre-crash sensor system, in which a velocity of an *obstacle* is determined. “[A]n obstacle is classified on the basis of pre-crash sensor signals by determining the obstacle velocity, acceleration, and acceleration change.” (The “Oswald” reference, column 1, lines 59 to 61.) Thus, the velocity of the vehicle, as provided for in the context of the claimed subject matter, is not disclosed. The Final Office Action relies on the “Burdock” reference as assertedly curing this defect. It is conclusorily asserted that “a wheel speed sensor (27), . . . can [be] used to determine the vehicle speed on a rough road or [a] sharp bend. However, *prima facie* obviousness cannot be established based on a modification of a reference that destroys the intent, purpose, or function of the

invention disclosed in the reference, since there is no suggestion or motivation to make the proposed modification. *See In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). The purpose of the wheel speed sensor 27 of the "Burdock" reference is to measure *acceleration* -- and not velocity. For example, it is provided that "vehicle roll [is] to be controlled actively in response to signals input to the control unit from wheel speed sensors 27 first and second lateral accelerometers 29, 30 which provide signals indicative of the acceleration of parts of the vehicle body in various directions." ("Burdock" reference, column 2, lines 5 to 10.) Thus, the information provided by sensor 27 is the *change in velocity* -- and not the speed of the vehicle as provided for in the context of the claimed subject matter.

Also, the Oswald reference does not disclose nor even suggest the feature of determining a *plausibility check*, as provided for in the context of the subject matter of claim 9. The Final Office Action asserts that "the wheel speed sensor in Burdock is attached to a front wheel for checking the velocity of the vehicle when driving through the rough roads and report to a control unit (26) in response to variations in the vehicle speed." It is totally unclear how this corresponds to a plausibility check. In fact, it is indicated that "the control means is arranged to measure an *average* of the signal from the accelerometer over time to determine a *reference signal* which corresponds to zero lateral acceleration, and to compare the instantaneous signal with the reference signal to measure the instantaneous lateral acceleration." ("Burdock" reference, column 1, lines 23 to 29.) This comparison is not a plausibility check -- as provided for in the context of the claimed subject matter, but simply a magnitude that needs to be corrected based on a reference created by averaging prior data. It is also indicated that under "abnormal driving conditions" certain data is not "included in the averaging process." ("Burdock" reference, column 3, lines 1 to 6.) This omission of data is not a plausibility check but simple exclusion of data that could adversely affect the average that is used as a reference point. Accordingly, neither the "Oswald" reference by itself (or in combination with the relied upon "Burdock" reference) describes or even suggests the claim 9 feature in which *the remote sensor is used to perform a plausibility check for the velocity of the vehicle*.

Therefore the relied upon reference(s) do not disclose or suggest all of the features of claim 9, so that it is allowable, as are its dependent claims 10 to 18.

It is therefore respectfully submitted that claims 9 to 18 are allowable.

Conclusion

It is therefore respectfully submitted that all of pending and considered claims 9 to 18 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: _____

3/11/2008

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